

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

MELISSA G.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
CHILDREN & FAMILY SERVICES,

Real Party in Interest.

F045411

(Super. Ct. No. 03-300071)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Dennis A. Caeton, Judge.

Melissa G., Petitioner, in pro. per.

No appearance for Respondent.

Dennis A. Marshall, County Counsel and Howard A. Watkins, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

*Before Harris, A.P.J., Levy, J., and Gomes, J.

Petitioner in pro per seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.¹ We will deny the petition.

STATEMENT OF THE CASE AND FACTS

On March 22, 2003, petitioner left her two infant daughters, 20-month-old S. and three-month-old B., unattended in a trailer for approximately 40 minutes. The children had access to scissors and exposed electrical wiring. In addition, B. had a rash around her neck that appeared to be infected. Petitioner told the investigating police officers she was under a lot of stress because she did not know how to take care of children. Her mother had died three days before and she had no one else to help her.

The children were detained, placed in foster care and declared dependents of the juvenile court. On May 15, 2003, the juvenile court ordered petitioner to complete courses in parenting, anger management and domestic violence, complete substance abuse and mental health evaluations and follow recommended treatment and submit to random drug testing. The court set the six-month review hearing for October 8, 2003.

On July 14, 2003, the court ordered the Fresno County Department of Children and Family Services (department) to refer petitioner to Central Valley Regional Center (CVRC) for assessment and any recommended treatment. The department made the referral on August 26, 2003.

In August 2003, clinical psychologist Alison Armstrong-Conner, Ph.D. assessed petitioner together with S. and B. Dr. Armstrong-Conner reported that S. “displayed indiscriminate affection and was ambivalent about contact with [petitioner]. [Petitioner] was unable to recognize [S.’s] emotional cues and struggled with soothing her. During the separation from [petitioner], [S.] was not distressed and instead ran away from the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

door. The foster parents reported [S. was] experiencing disrupted sleep patterns and ‘needs constant affection and attention.’ ” Dr. Armstrong-Conner described petitioner as “confused and forgetful” and concluded her judgment and insight were poor. She recommended petitioner undergo a psychological evaluation to determine her capacity to keep her children safe.

Petitioner was also evaluated in August 2003 by Peggy Thompson, MFT. Ms. Thompson described petitioner as “a confused and sad 18 [year-old] who [was] struggling with despair.” She further reported petitioner had “no family support system other than a new boyfriend and her 23 [year-old] sister who [was] attempting to get placement [of petitioner’s children]. [Petitioner’s symptoms] are interfering with her functioning as she is crying for hours day and night.” She recommended petitioner undergo a psychological evaluation and participate in individual counseling.

In its six-month status review, the department reported that petitioner was dropped from several of her programs for nonattendance and that she was missing visits with the children. Since the children were under the age of three when detained and petitioner had not made significant progress in her case plan, the department recommended the court terminate reunification services at the six-month review hearing.

Petitioner challenged the department’s recommendation, claiming in her statement of issues, that she was participating in a parenting class, which she expected to complete on December 18, 2003, that she was participating in individual therapy and that she attended half of the sessions required to complete the anger management/domestic violence class. She also argued she was not provided reasonable services because the department delayed two months in obtaining her substance abuse assessment which she completed on July 2, 2003. As a result, she claimed, she was delayed in starting her substance abuse program. The court conducted the contested six-month review hearing on October 29, 2003, continued services for another two months and set continued review hearing for December 17, 2003.

The review hearing set for December 17, 2003 was continued several times and conducted on February 2, 2004. The department reported that petitioner completed her parenting class on December 18, 2003. However, petitioner denied having any parenting problems and insisted her children should have never been taken from her. She refused to participate in substance abuse treatment. She attended individual therapy but was discharged for missed appointments. Further, after a missed and rescheduled appointment for CVRC, she was awaiting an assessment scheduled for February 13, 2004. The juvenile court continued services, reserved its finding of reasonable services and ordered another psychological evaluation. On February 13, 2004, petitioner completed an evaluation at CVRC and was referred for services.

On February 24, 2004, petitioner was evaluated by clinical psychologist Donald Templer, Ph.D. Dr. Templer observed in his report that petitioner had very dirty fingernails and a bandage on her right hand. She explained that the night before she took a pot of water off the stove and poured boiling water over her hand in the sink not realizing that the stove was still on. She claimed she cleaned her fingernails every day and bathed four or five times a day.

Dr. Templer diagnosed petitioner with moderate to mild mental retardation. He concluded she was “deficient in the necessary skills and judgment and prudence to be an effective parent.” He further reported,

“There is nothing more that the [department] can provide [petitioner]. She has been unable to benefit from and sufficiently participate in the services. Even if she demonstrated adequate attendance, she would not benefit from the classes as much as a person of normal intelligence. Furthermore, her ability to apply what she has learned would be limited because of her mental retardation. If she cannot take sufficient care of herself (e.g., pouring boiling water on her hand and having dirty fingernails), she cannot take care of her children. [Petitioner] told the examiner that she was at [CVRC] (for the developmentally disabled) a couple of weeks ago. She is apparently receiving services there for her developmental disability.”

In light of petitioner's poor progress and the results of her psychological evaluation, the department recommended the court terminate reunification services. The department also informed the court petitioner tested positive for drugs on March 31, 2004.

The continued contested review hearing was conducted on April 21 and 22, 2004, on the issue of reasonableness of services. Dr. Templer testified that petitioner had, at best, the mental ability of a nine-year-old. As a result, she did not have sufficient judgment or decision-making ability to independently parent a child. He did not believe the department could have provided any additional services that would have assisted petitioner in regaining custody of her children. Rather, he believed her care rested with CVRC. He testified he did not have detailed knowledge of CVRC's operations but generally knew CVRC assisted developmentally disabled individuals such as petitioner. He believed CVRC might be able to teach petitioner limited parenting skills such as making a sandwich for the children but did not believe she would be able to ever develop the required judgment to ensure their safety.

The court inquired further about the services available at CVRC. The social worker contacted CVRC and, after a break, reported that petitioner was assigned a counselor on March 15, 2004. Petitioner's counselor was not available but another staff member stated an individual plan was completed for petitioner. As part of that plan, petitioner was referred for substance abuse treatment, which she refused, claiming she did not need it. The court accepted the social worker's update into evidence, terminated reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Petitioner claims the juvenile court relied on inaccurate and incomplete information concerning the services available at CVRC and therefore erred in terminating reunification services. She bolsters her argument with a letter dated May 14, 2004, from CVRC Program Manager Todd Chase who confirmed the court was provided inaccurate information regarding CVRC services. Mr. Chase further stated in his letter that CVRC

can help petitioner keep her appointments and visitation and that petitioner “will do much better with CVRC support services than she has done without them”

Petitioner also refutes the social worker’s statement to the court that she refused substance abuse treatment. Rather, she claims, she was assessed as ineligible for outpatient drug treatment.

As a reviewing court, we review the correctness of the juvenile court’s judgment at the time of its rendition and upon the record that was before the juvenile court for consideration. (*In re Zeth Z.* (2003) 31 Cal.4th 396, 405.) In this case, the contested six-month review hearing first conducted on October 29, 2003, was continued over the next six months so that the juvenile court could rule on the reasonableness of services provided. As petitioner points out, the court’s determination was based, in part, on whether CVRC could assist petitioner in independently parenting her children. The only evidence before the juvenile court was Dr. Templer’s testimony that petitioner’s mental retardation would always limit her judgment and decision-making ability. From that, the court concluded there were no other services the department could have provided to petitioner and therefore she was provided reasonable services. Accordingly, the court terminated reunification services and set the matter for a section 366.26 hearing. On this record, we conclude substantial evidence supports the juvenile court’s findings and orders. Accordingly, we deny the petition.

However, we feel it is important to note that petitioner has a remedy in the juvenile court. She has the right to present her new evidence and seek modification of the order terminating reunification services by filing a section 388 petition in the juvenile court.²

² Section 388 allows the parent of a child adjudged a dependent of the juvenile court to petition the court to change, modify or set aside any order upon grounds of change of circumstance or new evidence. In this case, for example, petitioner could present any

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

new evidence on the question whether CVRC offers services that would assist her in reunifying with her children.